

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

CATHYE JO STEPHENS,)
)
Plaintiff)
) No. 3:16-2715
v.) Judge Trauger/Brown
)
SOCIAL SECURITY ADMINISTRATION,)
)
Defendant)

TO: THE HONORABLE ALETA A. TRAUGER

REPORT AND RECOMMENDATION

For the reasons stated below, the Magistrate Judge recommends that this case be dismissed without prejudice for failure to obtain service of process within 90 days as required by Federal Rules of Civil Procedure 4(m).

BACKGROUND

The complaint in this matter was filed on October 12, 2016 (Docket Entry 1), along with an application (Docket Entry 2) to proceed *in forma pauperis*. For some reason the application to proceed *in forma pauperis* was not approved by Chief Judge Sharp until February 24, 2017 (Docket Entry 3). At that point summonses were issued for the Social Security Administration, the United States Attorney, and the United States Attorney General, and mailed to Plaintiff's counsel for service (Docket Entry 4).

Subsequently, the case was reassigned to Judge Trauger and referred to me for case management and a report and recommendation as to any dispositive motions (Docket Entry 5). On April 26, 2017, I issued an order (Docket Entry 6) pointing out

that summonses were issued on February 24, 2017, and as of the date of my order no proof of service had been returned. Counsel was reminded of the necessity of obtaining service of process within 90 days, and that if such service had been accomplished the proof of service should be promptly filed. Unfortunately, counsel did not respond to this order by either requesting additional time or providing proof of service.

On June 7, 2017, I issued an order to show cause within seven days that such process had been accomplished or why a recommendation that the case be dismissed for failure to obey Court orders and to prosecute be entered.

As of the date of this report and recommendation counsel has not responded in any way.

LEGAL DISCUSSION

Rule 4(m) is quite clear that if a defendant is not served within 90 days after the complaint is filed the Court-on motion or on its own after notice to the plaintiff-must dismiss the action without prejudice against the defendant or order that service be made within a specific time.

In this case more than 90 days have expired since summonses were provided to Plaintiff's counsel for service and the Plaintiff has been given two opportunities to show that service has been accomplished or to show cause why the Magistrate Judge should not recommend dismissal. Service of process in this case is straightforward. The summonses provided by the Clerk simply have to

be mailed certified mail, return receipt requested, to the Commissioner of Social Security, the United States Attorney General, and the United States Attorney for the Middle District of Tennessee, and the return receipts filed with the Court.

In this case, despite warning and adequate time, Plaintiff's counsel has simply provided the Court with no response whatever.

RECOMMENDATION

The Magistrate Judge recommends that, for the reasons stated above, in accordance with Rule 4(m) that this case be dismissed without prejudice for failure to obtain service of process.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has **14 days** from receipt of this Report and Recommendation in which to file any written objections to this Recommendation with the District Court. Any party opposing said objections shall have **14 days** from receipt of any objections filed in this Report in which to file any responses to said objections. Failure to file specific objections within **14 days** of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *Thomas v. Arn*, 474 U.S. 140 106 S. Ct. 466, 88 L.Ed.2d 435 (1985), *Reh'g denied*, 474 U.S. 1111 (1986).

ENTER this 22nd day of June, 2017.

/s/ Joe B. Brown
JOE B. BROWN
United States Magistrate Judge